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25 APR 1972

MEMORANDUM FOR THE RECORD

SUBJECT: National Environmental Policy Act of 1969

1. On 20 April 1972, the undersigned met with Mr. William Dirkes, CEQ staff officer, and Mr. Phillip Soper, CEQ General Counsel representative, to discuss the Agency's proposed procedures for implementing Section 102(2)(C) of the National Environmental Policy Act of 1969. This section requires that all agencies develop procedures "which will insure that the environmental amenities and values are given appropriate consideration in decisionmaking along with economic and technical considerations, and to prepare a detailed statement on major Federal actions that significantly affect the quality of the human environment." The Act also specifies that these procedures be developed in consultation with the Council on Environmental Quality (CEQ).

2. The undersigned started the meeting by outlining briefly the organizational structure of the Agency, illustrating the point to which responsibility to make environmental impact statements had been delegated (Director of Logistics), and provided Messrs. Dirkes and Soper with a copy of the proposed Logistics Instruction and Headquarters Notice. (These copies were retrieved at the end of the meeting.) It was explained that the LI is intended as a working procedure for use within the Office of Logistics, whereas the HN will be given wider circulation throughout the Agency and states Agency policy in broader terms. It was explained that, in developing the format and detail of the procedures, we had relied heavily on GSA and DOD environmental procedures, modifying them to the extent that we determined they were inappropriate to this Agency.

3. After reading the documents, Mr. Soper observed that paragraph 3a(2) of the LI was contradictory to recent court decisions and suggested the paragraph be deleted. This presents no problem to us. (This paragraph had been taken from GSA/PBS procedures which, Mr. Soper observed, would be changed if they had not already been changed.)

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4. The above was the only specific exception that either Messrs. Dirkes or Soper took to the proposed procedure, although there followed a lengthly conversation in which they made general comments. (In this regard, the meeting was reminiscent of other meetings the undersigned has attended with NCPC on the garage and the necessity for a Master Plan.)

5. Mr. Soper expressed concern that environmental matters be given consideration early in the decisionmaking process. As an example, he suggested that the boiler plate in budget submissions or requests for project approvals contain a provision requiring consideration of environmental impact and the procedures reflect this. He also inquired at length regarding the types of actions which the Agency might take which would require environmental statements. He mentioned overseas activities, citing Department of State procedures which cover environmental statements associated with treaties or other formal agreements entered into with foreign governments.

6. The undersigned explained that the Agency's function was substantially different from that of the Department of State and that we did not, of course, sign treaties or execute agreements with foreign countries or, for that matter, undertake other types of projects in foreign countries such as those of the Department of Defense or other government agencies.

7. The undersigned stated that, as outlined in the LI, the principal area of impact that Agency actions would have would be in the area of real estate and construction. However, we did understand the broader application of the NEPA and our procedures were broadly written to apply to the Agency's operations as a whole.

8. It was agreed that the actions of a contractor incident to a government contract were not covered under the NEPA if these actions were not specifically directed by the contract. An illustration was a contractor who, in performance of a government contract, discharges waste into a river or otherwise adversely affects the environment.

9. Mr. Dirkes mentioned that other agencies have developed internal assessment procedures which are used in determining whether an impact statement is required. He suggested that we may want to develop such procedures and referred the undersigned to a Commander Limmerik of the Pentagon (telephone: 11-70896) as a source of information on assessment procedures that the Department of Navy had developed.

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10. Both gentlemen stressed the point that detailed procedures were important and it was equally important that, once the procedures are developed, the Agency follow them. Mr. Dirkes stated that, in recent challenges to government actions, the courts have generally ruled in the government's favor when it was demonstrated that the agency involved had followed its own procedures. (This is an observation reached by way of the fact that, in the majority of cases where the government lost, it was determined to the court's satisfaction that the agency had not followed its own procedures or that those procedures were too vague. It occurs to the undersigned that what the court may have been saying was that, if the procedures had been followed, the action would not have been taken in the first place.)

11. Mr. Soper stated that our procedures must be published in the Federal Registry. He stated that we may wish to submit them to the CEQ first, or we could submit them to both simultaneously. He suggested that we might prefer to get CEQ's formal comments first. When the procedures are submitted to CEQ, they will automatically request comments from OMB and EPA and comment to us within 2 to 3 weeks. The undersigned inquired whether publishing the procedures in the Federal Registry was necessary. Mr. Soper replied that it was and, if we did not do it, CEQ would undoubtedly do it for us. It was requested that our proposed procedures, with whatever covering explanation we desired, be sent to CEQ to the attention of Mr. Timothy Atkeson, General Counsel.

12. The meeting terminated at this point. The meeting was friendly and both gentlemen expressed willingness to assist the Agency. They seemed appreciative of our problems.

OBSERVATIONS

The question of publication of procedures in the Federal Registry raises a question we have not previously faced and guidance is requested. Regarding the other points raised at the meeting, the undersigned proposes to do the following:

1. Paragraph 3a(2) of the LI be deleted.

2. Paragraph 3b, "Identifying Agency Actions Requiring Environmental Statements," be reviewed and expanded or reworded to broaden its impact.

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4. At this time, we not make any effort to place environmental review in budget boiler plate or elsewhere. If CEQ restates this point in their formal review, we may wish to consider it at that time.

5. That the revised LI be submitted to CEQ for review and comment. (The HN should not be submitted to CEQ, but it should be referred to in the transmitting letter.)

25X1A [redacted]

Special Assistant to the
Director of Logistics

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